

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ZACHARY K.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

CASE NO. 2:22-CV-823-DWC

ORDER REVERSING AND  
REMANDING DEFENDANT'S  
DECISION TO DENY BENEFITS

Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of the denial of his application for Supplemental Security Income disability benefits. Pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Rule MJR 13, the parties have consented to proceed before the undersigned.

After considering the record, the Court concludes the Administrative Law Judge (ALJ) provided clear and convincing reasons to discredit Plaintiff's subjective symptom testimony, but erred when he failed to adequately assess the objective medical evidence. As these assessments directly impact the residual functional capacity (RFC) assessment, the ALJ's errors were not

harmless and this matter must be reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with this Order.

### I. BACKGROUND

On January 9, 2020 Plaintiff applied for Title II disability insurance benefits and Title XVI supplemental security income, alleging disability beginning December 2, 2019 due to post-traumatic stress disorder (PTSD), depression, intermittent explosive disorder, and anxiety. Administrative Record (AR) 284. His claims were denied initially and upon reconsideration. AR 158, 162, 167, 170. He requested a hearing, which was held on May 27, 2021 before an ALJ, who denied his claim in a written decision dated June 30, 2021. AR 12, 36, 174; 20 C.F.R. § 416.1481.

### II. STANDARD

Pursuant to 42 U.S.C. § 405(g) this Court may set aside the Commissioner's denial of social security benefits if the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)). However, the Commissioner's decision must be affirmed if it is supported by substantial evidence and free of harmful legal error. 42 U.S.C. § 405(g); *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008).

Substantial evidence "is a highly deferential standard of review." *Valentine v. Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009). The Supreme Court describes it as "more than a mere scintilla." *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019). "It means—and means only—such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (internal quotations omitted).

### III. THE ALJ'S FINDINGS

The ALJ found Plaintiff has the severe impairment of degenerative disc disease of the cervical and lumbar spine, post-concussive syndrome, and PTSD. AR 17; 20 CFR 416.920(c).

The ALJ determined that Plaintiff had the RFC for light work, as defined in 20 CFR §§ 404.1567(b) and 416.967(b), with the following additional restrictions: the ability to frequently climb ramps and stairs; frequently reach overhead with the bilateral upper extremities; frequently be exposed to extreme cold and hazards (such as unprotected heights and exposure moving mechanical parts); and frequently kneel and crouch. AR 21-22. In addition, the ALJ found Plaintiff's RFC was limited by the ability to occasionally climb ladders, ropes, and scaffolds; occasionally stoop and crawl; occasionally engage in brief, superficial interactions with the general public and coworkers; and, occasionally engage in supervisory interactions. *Id.* Finally, the ALJ found Plaintiff had the RFC for simple, routine tasks within normal tolerances for a normal workday and workweek, with normal breaks. *Id.*

At step five of the sequential evaluation the ALJ concluded that a person of Plaintiff's age, with his education, work experience, and RFC, remained capable of performing jobs that exist in significant numbers in the national economy such as power screwdriver operator, routing clerk, or production assembler. AR 29; 20 CFR §§ 404.1569 and 404.969.

### IV. DISCUSSION

Plaintiff claims the ALJ failed to provide legally sufficient reasons to discount his subjective symptom reporting and also failed to properly evaluate the medical evidence. *See generally*, Dkt. 13. Plaintiff asks this Court to remand his claim for further proceedings. *Id.* Defendant maintains the decision denying benefits is supported by substantial evidence, free of legal error, and should be affirmed. *See generally*, Dkt. 17.

1 **A. The ALJ provided clear and convincing reasons to discredit Plaintiff's subjective**  
 2 **symptoms.**

3 Plaintiff argues the ALJ failed to provide legally sufficient reasons for rejecting his  
 4 testimony regarding his mental health related impairments. *See generally*, Dkt. 13.

5 1. The ALJ's Subjective Symptom Findings

6 The ALJ summarized Plaintiff's subjective symptom reporting as follows:

7 The claimant alleged the following: He experiences physical symptoms of  
 8 headaches, back pain, and fatigue. He has **psychological symptoms of poor**  
 9 **concentration, poor stress coping, anxiety, nightmares, interpersonal**  
 10 **difficulties, and irritability.** His pain symptoms are worse with exertion. Stress  
 11 causes him to experience emotional outbursts. His acute psychological  
 12 exacerbations are characterized by flashbacks, erratic behaviors, pacing, and  
 13 agitation.

14 \* \* \*

15 He has **medication side effects of dizziness, fatigue, and drowsiness.** His function  
 16 report noted physical difficulties with lifting, bending, standing, reaching, walking,  
 17 and climbing. It **also described mental difficulties with memory, concentration,**  
 18 **task completion, understanding, and getting along with others.** Overall, the  
 19 claimant estimates that he could not walk more than 300 feet at one time, would  
 20 have difficulty paying attention more than 10-20 minutes, and does not respond  
 21 well to stress or changes in routine. He testified that, even in a job where he was  
 22 working primarily by himself, **he would be unable to maintain such work due to**  
 23 **emotional distress and PTSD episodes** (12E, 27E, Hearing Testimony).

24 AR 22 (emphasis added).

The ALJ found Plaintiff's statements concerning the intensity, persistence and limiting  
 effects of his symptoms were not "entirely consistent with the medical evidence and other  
 evidence in the record for the reasons explained in this decision." AR 23.

The ALJ found the "overall record" fails to support Plaintiff's allegations relating to  
 his spinal impairments—a finding Plaintiff does not challenge, and therefore the Court will not  
 discuss in further detail. AR 23; *see also*, *Cruz v. Int'l Collection Corp*, 673 F.3d 991, 998 (9th  
 Cir. 2012) ("We review only issues which are argued specifically and distinctly in a party's

opening brief”) (internal quotations and citations omitted). Similarly, the ALJ found Plaintiff’s post-concussive syndrome and associated headaches and cognitive difficulties resolved with time and medication—also findings Plaintiff does not challenge and will therefore not be disturbed.

*Id.*

Plaintiff does challenge the ALJ’s finding that Plaintiff’s activity level was inconsistent with his claimed physical and cognitive limitations, which the ALJ described as “light cleaning and housework, prepares simple meals, plays videos games for approximately six hours per day, and occasionally does laundry or grocery shopping”, the ability to “able to go out alone” and “uses public transportation”, and “generally finishes what he starts and is able to pay bills and manage finances.” AR 22, 24-25.

Plaintiff also challenges the ALJ’s finding regarding Plaintiff’s alleged mental-health related impairments. The ALJ found record support for Plaintiff’s “long-term symptoms of poor concentration, emotional outbursts, anxiety, irritability, depression, social isolation, fatigue, and intrusive thoughts” and noted that Plaintiff had undergone “psychological counseling” and had prescriptions for several psychotropic medications. AR 24. The ALJ concluded that this “evidence of long-term signs and symptoms, with diligent pursuit of treatment, provides some basis for [Plaintiff’s] alleged symptoms and limitations”. *Id.*

Nevertheless, the ALJ found that “the longitudinal record fails to provide full support” for Plaintiff’s allegations because “providers have consistently described [Plaintiff] as calm and cooperative with normal mood, affect, and eye contact” (citing AR 463, 484, 485, 488, 490, 500, 502, 504, 506, 568, 570, 571, 573, 575, 608, 619, 621, 625, 648, 673, 674, 678, 775, 803, 815, 817, 821), found him “to be in no acute distress” (AR 509, 514, 516, 518, 567, 580, 583, 586, 617, 677, 680, 813, 835, 854, 880, 950, 952), and “do not describe recurrent difficulties in terms

1 of [Plaintiff's] ability to control his emotions or behavior during appointments" (citing AR 484,  
 2 485, 488, 490, 500, 504, 568, 570, 571, 573, 575, 619, 621, 623, 625, 673, 674, 678, 815, 817,  
 3 819, 821). AR 24-25.

4 In addition, the ALJ stated that Plaintiff's mental status examinations were routinely  
 5 within normal limits, describing Plaintiff as alert and oriented, with appropriate affect, and  
 6 normal speech, thought processes, cognition, and content. AR 25, 484, 485, 488, 490, 500, 502,  
 7 504, 568, 570, 571, 573, 575, 578, 608-09, 619, 621, 623, 625, 628, 657, 673, 674, 677, 678,  
 8 750, 751, 752, 753, 769, 803, 815, 817, 819, 824, 836, 854, 880, 896, 950, 954. Such findings,  
 9 according to the ALJ, "no not provide substantial support for [Plaintiff's] allegations that he is  
 10 unable to pay attention more than 20 minutes at one time." *Id.*

11 Finally, the ALJ found that Plaintiff's mental-health related testimony is undermined by  
 12 the fact Plaintiff had a "good response" to medication. AR 25.

## 13 2. Legal Standard

14 When assessing the reliability of a claimant's disability allegations, an ALJ considers the  
 15 extent to which such allegations are consistent with the objective evidence and other evidence in  
 16 the record. 20 C.F.R. § 416.929(c). Absent evidence of malingering, an ALJ must provide clear  
 17 and convincing reasons to reject a claimant's testimony. *Lingenfelter v. Astrue*, 504 F.3d 1028,  
 18 1036 (9th Cir. 2007) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). "General  
 19 findings are insufficient; rather, the ALJ must identify what testimony is not credible and what  
 20 evidence undermines the claimant's complaints." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir.  
 21 1996). "In weighing a claimant's credibility, the ALJ may consider his reputation for  
 22 truthfulness, inconsistencies either in his testimony or between his testimony and his conduct, his  
 23 daily activities, his work record, and testimony from physicians and third parties concerning the  
 24

1 nature, severity, and effect of the symptoms of which he complains.” *Light v. Social Sec. Admin.*,  
2 119 F.3d 789, 792 (9th Cir. 1997).

### 3 3. Analysis of Plaintiff’s Arguments

4 As stated above, the ALJ found Plaintiff’s statements concerning the intensity,  
5 persistence and limiting effects of his symptoms were not “entirely consistent with the medical  
6 evidence and other evidence in the record”. AR 23. While Plaintiff does not directly attempt to  
7 challenge this finding, he does argue that the ALJ’s “general summary of some normal activities  
8 fails to identify inconsistencies between Plaintiff’s allegations and the record as a whole.” Dkt.  
9 13 at 17. This Court does not find merit to this claim because the ALJ thoroughly explained that  
10 Plaintiff’s activities undermine his claimed limitations associated with spinal problems and  
11 having experienced a concussion. AR 23-24. Although Plaintiff does not challenge these  
12 findings, the Court nevertheless affirms that they are clear and convincing reasons to discredit  
13 Plaintiff’s testimony.

14 Regarding Plaintiff’s physical impairments, the ALJ explained that Plaintiff consistently  
15 exhibited normal gait and his neurological functioning was routinely intact. AR 23. The ALJ  
16 stated that imaging during the relevant period reflected mild issues, and that Plaintiff engaged in  
17 a conservative course of treatment for his spinal conditions. *Id.* The ALJ further found that  
18 Plaintiff had a good response to physical therapy, which he was discharged from after about a  
19 month with his therapist finding his back was “much more stable”, “walking was easier”, he had  
20 demonstrated “significant improvement” in his range of motion and headache symptoms, and  
21 exhibited “minimal to no muscle spasms now”. *Id.*

22 With regard to Plaintiff’s post-concussive syndrome, the ALJ noted that after  
23 experiencing a head injury at work in December 2018, Plaintiff reported experiencing occasional  
24 headaches, nausea, and increased sensitivity to loud noise. *Id.* However, the ALJ found

1 Plaintiff's concussion had resolved by the next month with imaging reflecting that his brain was  
2 "within normal limits", and his doctor concluding that Plaintiff was "back to baseline" and "okay  
3 with working full duty." AR 23-24. Moreover, the ALJ determined that Plaintiff received  
4 "conservative headache treatment". AR 24. Thus, the ALJ concluded that Plaintiff did not have  
5 any lasting cognitive difficulties associated with the concussion. *Id.*

6 The ALJ supported each conclusion by identifying in the record the objective medical  
7 evidence and showing how Plaintiff's impairments improved over time. As a result, the ALJ's  
8 assessment of Plaintiff's subjective symptom reporting was supported by substantial evidence.

9 With regard to the ALJ's treatment of his mental health-related impairment testimony,  
10 Plaintiff contends the ALJ's statement that treatment records "do not describe recurrent  
11 difficulties in terms of [Plaintiff's] ability to control his emotions or behavior during  
12 appointments" it is not a clear and convincing reason to reject his testimony because the ability  
13 to interact with trained mental health professionals is not inconsistent with his testimony that he  
14 has great difficulty dealing with the general public. Dkt 13 at 16 (citing AR 24 and *Tina R. v.*  
15 *Commr. of Soc. Sec.*, Case No. C18-1041-JLR, 2019 WL 1417301, at \*5 (W.D. Wash. Mar. 29,  
16 2019)(finding the "medical treatment relationship is not like the relationship a worker has with  
17 her coworkers, supervisors, or the general public. The goals and nature of interacting with  
18 healthcare providers is different."). Moreover, Plaintiff argues the ALJ's selective references to  
19 occasions when his mental status was assessed as "normal" do not "cancel out" the occasions  
20 when his mental status was described as severely "abnormal". Dkt. 18 at 6 (citing *Johnson v.*  
21 *Berryhill*, Case No. C17-5623-MAT, 2018 WL 3008879, at \*4 (W.D. Wash. June 15, 2018)  
22 ("...the existence of other normal findings does not negate Dr. Wingate's examination.").



1 Defendant insists the ALJ's role is not to "reconcile" inconsistent clinical findings, but to  
2 synthesize the medical evidence into a residual functional capacity assessment, which the ALJ  
3 did by including a number of limitations in his RFC that accommodate for Plaintiff's mental-  
4 health related symptoms. Dkt. 17 at 5 (citing AR 24). Moreover, Defendant argues that the ALJ  
5 did not only cite to mental-health appointments where Plaintiff was a-symptomatic, but also a  
6 few physical-health appointments. Dkt. 17 at 6 (citing AR 509, 514, 835, 854, 880, 950, 952,  
7 954).

8 The Court concurs with Plaintiff that the ALJ fails to explain how his "normal"  
9 presentation at healthcare appointments discredits his claim that he is extremely impaired in the  
10 ability to get along with co-workers. Whether these appointments were with mental healthcare  
11 specialists or other healthcare professionals, the law is clear that a Plaintiff's ability to interact  
12 pleasantly with healthcare professionals who seek to help him does not translate into an ability to  
13 interact pleasantly with the general public. Therefore, this was not a clear and convincing reason  
14 to discredit Plaintiff's testimony regarding his inability to get along with co-workers.

15 Nevertheless, "harmless error" principles apply in the Social Security context. *Molina v.*  
16 *Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless only if it is not prejudicial to  
17 the claimant or if it is "inconsequential" to the ALJ's "ultimate nondisability determination."  
18 *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *see also Molina*, 674  
19 F.3d at 1115. The determination whether an error is harmless requires a "case-specific  
20 application of judgment" by the reviewing court, based on an examination of the record made  
21 "without regard to errors' that do not affect the parties' 'substantial rights.'" *Molina*, 674 F.3d at  
22 1118-1119 (quoting *Shinseki v. Sanders*, 556 U.S. 396, 407 (2009) (quoting 28 U.S.C. § 2111)).  
23  
24

Here, although the ALJ's finding that Plaintiff's "normal" presentation at healthcare appointments discredited his testimony regarding his ability to get along with co-workers, this error was harmless as the ALJ cited other clear and convincing reasons, as discussed above, for discrediting Plaintiff's testimony. *Batson*, 359 F.3d at 1197.

In conclusion, the Court finds the ALJ provided clear and convincing reasons to discredit Plaintiff's subjective symptom testimony.

**B. The ALJ's evaluation of some of the objective medical evidence was not legally sufficient.**

**1. The ALJ's Mental Health Record Findings**

The ALJ was persuaded by the opinions of state agency psychological consultants John D. Gilbert, Ph.D., and Matthew Comrie, Psy.D., who found Plaintiff capable of simple tasks and ordinary, routine work without special supervision; occasional, brief, and superficial contact with the general public and coworkers; and completing a normal work week consisting of simple tasks, with normal breaks. AR 25-26, 97-99, 112-13, 130-31, 147-148. However, Plaintiff contends the ALJ failed to support his rejection of the medical opinions of Katrina Heinz-Query, LMHCA, and Susan Hakeman, M.D., with substantial evidence. *See generally*, Dkt. 13.

**2. Legal Standard**

The regulations regarding the evaluation of medical opinion evidence have been amended for claims filed on or after March 27, 2017. Revisions to Rules Regarding the Evaluation of Medical Evidence ("Revisions to Rules"), 2017 WL 168819, 82 Fed. Reg. 5844, at \*5867-5868; \*5878-5879 (Jan. 18, 2017). Since Plaintiff filed his claim after that date, the new regulations apply. *See*, 20 C.F.R. §§ 416.1520c and 416.920c.

Under the revised regulations, ALJs "will not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical

finding(s) ...”. 20 C.F.R. §§ 416.1520c(1) and 416.920c(a). Instead, ALJs must consider every medical opinion or prior administrative medical finding in the record and evaluate each opinion’s persuasiveness using a list of factors listed. *See*, 20 C.F.R. §§ 416.1520(c)(a) and 416.920c(a). The two most important factors are the opinion’s “supportability” and “consistency.” *Id.* ALJs must explain “how [they] considered the supportability and consistency factors for a medical source’s medical opinions or prior administrative medical findings in [their] ... decision.” 20 C.F.R. §§ 416.1520c(b)(2) and 416.920c(b)(2).

“Supportability means the extent to which a medical source supports the medical opinion by explaining the ‘relevant ... objective medical evidence.’” *Woods v. Kijakazi*, 32 F.4th 785, 791-2 (9th Cir. 2022) (citing 20 C.F.R. § 404.1520c(c)(1)); *see also*, 20 C.F.R. § 416.920c(c)(1). “Consistency means the extent to which a medical opinion is ‘consistent ... with the evidence from other medical sources and nonmedical sources in the claim.’” *Id.* at 792 (citing 20 C.F.R. § 404.1520c(c)(2)); *see also*, 20 C.F.R. § 416.920c(c)(2).

### 3. Analysis of Plaintiff’s Arguments

#### a. *Katrina Heinz-Query, LMHCA*

On April 16, 2020, Katrina Heinz-Query, LMHCA (Heinz-Query), completed a mental functional capacity assessment of Plaintiff and opined that he is markedly limited in multiple work-related areas, such as the ability to: work in coordination with or proximity to others without being distracted by them; complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest breaks; interact appropriately with the general public; accept instructions and respond appropriately to criticism from supervisors; and, get along with co-workers or peers without distracting them or exhibiting behavioral extremes. AR 1037-1039.

1 In addition, Heinz-Query opined that Plaintiff is moderately limited in the ability to ask  
2 simple questions or request assistance, and to respond appropriately to changes in the work  
3 setting. AR 1039.

4 The ALJ found Heinz-Query's opinion was unpersuasive, explaining:

5 They do not comport with the overall record, which shows **conservative treatment**  
6 with **routinely intact findings relating to mood and behavior** (8F/4, 11F/9,  
7 12F/2/6/7, 16F/49, 18F/18, 19F/11/29/55/71/125). Providers consistently noted  
8 intact cognitive functioning (8F/4, 12F/2, 16F/49, 17F/15, 19F/71, 21F/1). This  
9 degree of limitation also does not reflect the **claimant's good responses to**  
10 **medication** (16F/45, 21F/2/5/11). This statement is also not well supported, as it  
11 did not provide a clear evaluation of the claimant's long-term clinical findings, but  
12 rather **noted that it was based in part on the claimant's subjective reports**  
13 (20F/4).

14 AR (emphasis added).

15 Plaintiff asserts the ALJ fails to explain how the medial records he cites are inconsistent  
16 with Heinz-Query's opinion, and overlooks Heinz-Query's own treatment notes which not only  
17 support her opined limitations, but also disprove that she simply credited Plaintiff's subjective  
18 complaints. Dkt. 13 at 8-9.

19 Regarding supportability, Plaintiff points out that Heinz-Query did not find that Plaintiff  
20 was significantly limited in the ability to maintain attention and concentration for extended  
21 periods, despite Plaintiff reporting an inability to concentrate, feeling easily distracted, and  
22 forgetting what he is doing. Dkt. 13 at 8 (citing AR 652, 1038). Moreover, Heinz-Query's own  
23 treatment notes document her clinical impressions such as that Plaintiff suffered from a  
24 depressed mood with anxious affect (AR 754, 755, 756, 747, 758, 763), exhibited signs of  
declining daily activities and personal hygiene, increasing isolation, irritability, and paranoia  
(AR 558, 648, 750, 752, 757, 760), exhibited symptoms consistent with PTSD, including the  
need to carry stuffed animals for self-soothing (AR 647, 751), was "tangential and challenging to

1 redirect” and expressed incongruent ideas of wanting to be part of something but also wanting to  
2 be separate. AR 647, 651, 750, 761, 762. Plaintiff insists the ALJ did not consider these records  
3 or explain how they failed to support Heinz-Query’s opinion, but instead selectively identified  
4 benign mental status findings unrepresentative of the record as a whole. Dkt. 18 at 3.

5 The Court concurs with Plaintiff that the ALJ failed to identify what evidence supported  
6 his conclusion that Heinz-Query relied to an inappropriate degree on Plaintiff’s subjective  
7 complaints rather than her professional judgment, and failed to acknowledge Heinz-Query’s own  
8 supporting treatment notes, making it impossible for this Court to meaningfully consider whether  
9 the ALJ took them into account. *See, Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017)  
10 (“[T]he rule allowing an ALJ to reject opinions based on self-reports does not apply in the same  
11 manner to opinions regarding mental illness.”)).

12 Regarding consistency, Plaintiff argues the ALJ’s finding that Heinz-Query’s opinion  
13 was inconsistent with the overall record, “which shows conservative treatment with routinely  
14 intact findings relating to mood and behavior” is legally and factually erroneous. Dkt. 13 at 5.

15 Plaintiff points to case law finding that the prescription of psychotropic medication does  
16 not constitute “conservative treatment”. Dkt. 13 at 5 (citing AR 47 and *Sanchez M. v. Kijakazi*,  
17 2:20-CV-08149-PD, 2022 WL 2102869, at \*3 (C.D. Cal. Mar. 1, 2022); *Mickei L. B. v. Commr.*  
18 *of Soc. Sec.*, C18-6048 TLF, 2020 WL 1502931, at \*4 (W.D. Wash. Mar. 30, 2020) (“There is no  
19 evidence in the record indicating that the prescription of ‘psychotropic medication’ and  
20 outpatient treatment is in fact conservative.”). Moreover, Plaintiff insists that the fact  
21 medications were “helpful” to him is not inconsistent with Heinz-Query’s opinion because “one  
22 can ‘improve’ from a gravely disabled state yet remain unable to sustain substantial gainful  
23  
24

activity in a competitive work environment.” Dkt. 18 at 2-3 (citing *Del Toro v. Berryhill*, Case No. 1:17-CV-01401-BAM, 2019 WL 495001, at \*5 (E.D. Cal. Feb. 8, 2019)).

The Court concurs with Plaintiff that the ALJ erroneously characterized his mental health treatment as “conservative” and committed further legal error by selectively relying on normal findings while omitting reference to records reflecting findings of anxious, depressed, and/or irritable mood. *See e.g.*, AR 568, 571, 647, 668, 673, 678, 760, 763, 769, 707-708; *see also*, *Rokiyah V. v. Commr. of Soc. Sec.*, Case No. 3:22-CV-5206-DWC, 2022 WL 13848091, at \*2 (W.D. Wash. Oct. 24, 2022)(the ALJ’s failure to consider the conflicting findings and “explain the discrepancies” constitutes legal error); *see also*, *Attmore v. Colvin*, 827 F.3d 875, 877 (9th Cir. 2016)(the ALJ’s selective reliance on only the normal findings was legal error).

In sum, the Court finds the ALJ’s assessment of Heinz-Query’s opinion is not supported by substantial evidence.

*b. Susan Hakeman, M.D.*

On December 9, 2019, Plaintiff presented for a psychiatric evaluation with Susan Hakeman, M.D. (Hakeman), and reported diagnoses of PTSD, intermittent explosive disorder, and post-concussive syndrome, as well as symptoms of constant fatigue, depression, and anxiety. AR 606. Hakeman observed that Plaintiff presented with significant body odor, carried a stuffed animal, walked stiffly, had a fair to reduced affect, a fearful thought process and content, difficulty with delayed memory, and required cueing. AR 608-09. Hakeman further found that Plaintiff struggled to interpret a proverb and that his insight and judgment were fair. AR 609.

Hakeman opined that Plaintiff has a “severe” limitation in the ability to do the following: understand, remember, and persist in tasks by following detailed instructions; maintain regular attendance and be punctual within customary tolerances without special supervision; perform routine tasks without special supervision; adapt to changes in a routine work setting;

1 communicate and perform effectively in a work setting; maintain appropriate behavior in a work  
2 setting; and, complete a normal work day and work week without interruptions from  
3 psychologically based symptoms. AR 607. Hakeman further opined that Plaintiff is “markedly”  
4 limited in the ability to ask simple questions or request assistance, and to set realistic goals and  
5 plan independently. AR 607.

6 The ALJ found “limited support” for Hakeman’s opinion, explaining that although it was  
7 “accompanied by recent examination findings such as poor grooming, fearful thought processes,  
8 and a reduced range of affect”, Hakeman’s conclusion that Plaintiff has extensive cognitive and  
9 intellectual deficits was not supported by her examination findings and was not consistent with  
10 the “overall record, which shows conservative treatment with routinely intact findings relating to  
11 mood and behavior” and healthcare providers “consistently not[ing] intact cognitive  
12 functioning”, “normal grooming”, and “good responses to medication”. AR 27.

13 According to Plaintiff, the ALJ legally erred by partially discrediting Hakeman’s opinion  
14 due to Plaintiff’s cognition. Dkt. 13 at 12. Plaintiff insists cognitive ability and intellect are not  
15 equivalent to the ability to sustain concentration, persist on tasks, and maintain pace. Dkt. 13 at  
16 12 (citing, *inter alia*, *Gattman v. Colvin*, 3:15-CV-00466, 2016 WL 1732660, at \*2–3 (D. Or.  
17 May 2, 2016)(“Plaintiff’s limitations in concentration, persistence, and pace do not arise out of  
18 cognitive limitations but from anxiety and depression. There is no conflicting evidence in the  
19 record as to limitations of concentration, persistence and pace.”)).

20 In addition, Plaintiff argues the ALJ’s string citations to allegedly “routine intact findings  
21 relating to mood and behavior” and “intact cognitive functioning” is factually erroneous as the  
22 record also contains findings that he was anxious, depressed, and/or irritable, and had limited  
23 insight and judgment. Dkt. 13 at 13 (citing 568, 571, 647, 668, 673, 678, 760, 763, 769, 707-08).

1 In addition, Plaintiff contends the ALJ's assertion that Plaintiff had a "good response to  
2 medication" was inaccurate because records show Plaintiff's medications were often adjusted  
3 and that he continued to self-isolate even with medication and talk therapy. *Id.* (citing AR 770,  
4 738-39, 818, 1044-46, 1048, 1051).

5 Defendant responds that the ALJ provided specific citations to the record that directly  
6 support her findings. Dkt. 17 at 12 (citing AR 26-27).

7 While the ALJ's citations to the record do support her findings, the Court concurs with  
8 Plaintiff that that ALJ failed to meet her burden of building an "'accurate and logical bridge from  
9 the evidence to her conclusion' so that the reviewing court may assess the validity of the  
10 agency's ultimate findings and afford a claimant meaningful judicial review." *See*, Dkt. 13 at 12  
11 (citing *Micheal D. v. Comm'r of Soc. Sec.*, Case No. 2:22-CV-464-DWC, 2022 WL 4377400, at  
12 \*3 (W.D. Wash. Sept. 22, 2022); *see also*, *Tate v. Astrue*, Case No. 1:11-CV-01643- SKO, 2013  
13 WL 211259, at \*5 (E.D. Cal. Jan. 18, 2013) (quoting *Scott v. Barnhart*, 297 F.3d 589, 595 (7th  
14 Cir. 2002)).

15 Here, the ALJ cited evidence relating to Plaintiff's cognitive functioning related to his  
16 post-concussive syndrome, but did not explain how she reached the conclusion that Plaintiff's  
17 intact cognitive performance undermined Hakeman's opinion regarding Plaintiff's emotional  
18 functionality. *See*, *Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014) (noting that  
19 "observations of cognitive functioning during therapy sessions [did] not contradict [the  
20 claimant's] reported symptoms of depression and social anxiety").

21 In addition, the ALJ's analysis included string citations which selectively show only  
22 normal findings and omit reference to, or discussion of, records reflecting findings of anxious,  
23  
24



1 depressed, and/or irritability. In sum, the Court finds the ALJ's assessment of Hakeman's  
 2 opinion is not supported by substantial evidence.

3 **C. The ALJ committed harmful error requiring remand for further proceedings.**

4 Harmless error principles apply in the Social Security context. *Molina v. Astrue*, 674 F.3d  
 5 1104, 1115 (9th Cir. 2012). An error is harmless, however, only if it is not prejudicial to the  
 6 claimant or if is "inconsequential" to the ALJ's "ultimate nondisability determination." *Stout v.*  
 7 *Commissioner Social Security Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006). The determination  
 8 as to whether an error is harmless requires a "case-specific application of judgment" by the  
 9 reviewing court, based on an examination of the record made "'without regard to errors' that do  
 10 not affect the parties' 'substantial rights.'" *Molina*, 674 F.3d at 1118-1119 (quoting *Shinseki v.*  
 11 *Sanders*, 556 U.S. 396, 407 (2009) (quoting 28 U.S.C. § 2111)).

12 Here, the ALJ's legally insufficient rejection of Plaintiff's subjective symptom testimony,  
 13 together with the deficiencies in the ALJ's assessment of the medical evidence, preclude this  
 14 Court from meaningfully determining whether the ALJ's denial of Plaintiff's claim was  
 15 supported by substantial evidence.

16 For instance, if the ALJ had credited Heinz-Query or Hakeman's opinions he may have  
 17 included far more restrictive limitations in Plaintiff's RFC. Accordingly, these errors were not  
 18 harmless. *See, Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014)  
 19 (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995))("We will 'disturb the  
 20 Commissioner's decision to deny benefits only if it is not supported by substantial evidence or is  
 21 based on legal error.'").

22 Consequently, this matter must be reversed and remanded for reevaluation of the two  
 23 medical opinions discussed herein, and reassessment of the five-step sequential evaluation.

**V. CONCLUSION**

For the foregoing reasons, the Court finds the ALJ improperly concluded that Plaintiff was not disabled. Accordingly, this matter is REVERSED and REMANDED to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with this order.

Dated this 13<sup>th</sup> day of April, 2023.



David W. Christel  
United States Magistrate Judge